

commands for compliance with the responsibilities assigned in §§ 536.9 and 536.10.

(b) Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).

(c) Assist TJAG, through the Commander USARCS, in implementing the functions set forth in § 536.7.

(d) Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

§ 536.15 Claims policies.

(a) *General.* The following policies will be adhered to in processing and adjudicating claims falling within this regulation. The Commander USARCS is authorized to publish new policies or rescind existing policies from time to time as the need arises.

(1) *Notification.* The Commander USARCS must be notified as soon as possible of both potential and actual claims which are serious incidents that cannot be settled within the monetary jurisdiction of a Command Claims Service or an ACO, including those which occur in the area of responsibility of a CPO. On such claims, the USARCS Area Action Officer (AAO) must coordinate with the field office as to all aspects of the investigation, evaluation and determination of liability. An offer of settlement or the assertion of an affirmative claim must be the result of a discussion between the AAO and the field office. Payment of a subrogated claim may commit the United States to liability as to larger claims. On the other hand, where all claims out of an incident can be paid within field authority they should be paid promptly with maximum use of small claims procedures.

(2) *Consideration under all subparts.* Prior to denial, a claim will be considered under all subparts of this part, regardless of the form on which the claim is presented. A claim presented as a personnel claim will be considered as a tort prior to denial. A claim presented as a tort will first be considered as a personnel claim, and if not payable,

then considered as a tort. If deniable, the claim will be denied both as a personnel claim and as a tort.

(3) *Compromise.* DA policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small non-meritous claims be paid. Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims. For example, a property damage claim may be compromised by deducting the cost of collection, *i.e.*, attorney fees and costs, even where liability is certain.

(4) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this part.

(5) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

(b) *Cooperative investigative environment.* Any person who indicates a desire to file a claim against the United States cognizable under one of the subparts of this part will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be

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assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. During claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

(c) *Claims directives and plans*—(1) *Directives*. Two copies of command claims directives will be furnished to the Commander USARCS. ACO directives will be distributed to all DA and DOD commands, installations and activities within the ACO's area of responsibility, with an information copy to the Commander USARCS.

(2) *Disaster and civil preparedness plan*. One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander USARCS.

(d) *Interpretations*. The Commander USARCS will publish written interpretations of this part. Interpretations will have the same force and effect as this part.

(e) *Authority to grant exceptions to and deviations from this part*. If, in particular instances, it is considered to be in the best interests of the government, the Commander USARCS may authorize deviations from this part's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

(f) *Guidance*. The Commander USARCS may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this part. These will be binding on all Army claims personnel.

(g) *Communication*. All claims personnel are authorized to communicate directly with USARCS personnel for

guidance on matters of policy or on matters relating to the implementation of this part.

(h) *Private relief bills*. The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel shall remain neutral in all private relief matters and shall not make any statement that purports to reflect the DA's position on a private relief bill.

§ 536.16 Release of information policies.

(a) *Conflict of interest*. Except as part of their official duties, government personnel are forbidden from advising or representing claimants or from receiving any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of federal criminal law (18 U.S.C. 203 and 205).

(b) *Release of information*. (1) Relevant statutes pertinent to the release of information include the Privacy Act of 1974, 5 U.S.C. 552a and 552b, the Freedom of Information Act (FOIA), 5 U.S.C. 552 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d through 1320d-8.

(2) It is the policy of USARCS that unclassified attorney work product may be released with or without a request from the claimant or attorney, whenever such release may help settle the claim or avoid unnecessary litigation.

(3) A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.